

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JEROME H. SPRAGUE, *et al.*,

Plaintiff,

v.

JUSTICE HARRY E. HULL, PRESIDING
JUSTICE VANCE W. RAYE,

Defendants.

Case No. 2:20-cv-02273-KJM-JDP (PS)

FINDINGS AND RECOMMENDATIONS TO
GRANT DEFENDANTS' MOTION TO
DISMISS

ECF No. 5

OBJECTIONS DUE WITHIN 14 DAYS

Defendants in this suit are two state appellate justices. Plaintiffs are Mr. Sprague—both as trustee and trustor—and the Jerome H. Sprague Family Revocable Trust.¹ Plaintiffs have filed four other federal civil rights actions against state judges, all arising from the same proceedings at issue in this suit, and all of which have been dismissed, primarily due to findings of judicial immunity. *See Sprague v. Brown*, 2:17-cv-00938-KJM-GGH (E.D. Cal. Aug. 16, 2017); *Sprague v. Phillips*, 2018 WL 1470566 (E.D. Cal. March 26, 2018); *Sprague v. Brown*, 2019 WL 1427460

¹ As defendants point out, plaintiffs' complaint does not show that Mr. Sprague is a beneficiary of the trust or an attorney; he thus cannot assert claims on behalf of the trust. *See C.E. Pope Equity Trust*, 817 F.2d 696, 697-98 (9th Cir. 1987); *Johns v. County of San Diego*, 114 F.3d 874, 876-77 (9th Cir. 1997).

1 (E.D. Cal. March 29, 2019); *Sprague v. Krause*, 2020 WL 5203441 (E.D. Cal. Sep. 1, 2020).²
2 Under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), defendants move to dismiss this
3 suit due to lack of subject-matter jurisdiction, Eleventh Amendment immunity, and judicial
4 immunity. ECF No. 5 at 2.

5 Plaintiffs' complaint focuses on defendants' actions and omissions during state court
6 proceedings. In 2003, Mr. Sprague was sued in California state court over regulatory violations.
7 After judgment was entered against him, he appealed to the California Court of Appeal, Third
8 Appellate District. The appeal was denied. In 2018, Mr. Sprague filed suit against the in-house
9 attorney and Chief Executive Officer of the Sacramento County Air Quality District, alleging
10 fraud relating to the 2003 litigation. The case was dismissed. Mr. Sprague appealed to the Court
11 of Appeal, and Justice Hull dismissed the appeal, noting that "[t]he court examined the notice of
12 appeal and determined the order appealed from is nonappealable." ECF No. 1 at 29. On
13 September 14, 2020, Mr. Sprague filed a document titled "Appellant's Reply-Opening Brief,"
14 which accused Justice Hull of violating a local rule and Mr. Sprague's due process rights. *See id.*
15 at 31-38. On September 24, 2020, Justice Hull issued an order that treated the brief as a petition
16 for rehearing, which he denied. *See id.* at 39.

17 Plaintiffs allege that Justice Hull did not properly acknowledge the merits of a form
18 submitted as part of litigation, improperly ruled that Mr. Sprague could not appeal an order, and
19 ruled that new briefs could not be submitted. *See id.* at 2-7. They claim that the "content and
20 intention" of Justice Hull's opinions constituted perjury, that he committed fraud by ignoring the
21 pleadings, and that he slandered Mr. Sprague in his rulings. *Id.* They allege that Justice Raye
22 "ignored and allowed Justice Hull to violate Penal Code sections 123 and 125," which deal with
23 perjury. *Id.* at 6. They further argue that Mr. Sprague's due process rights were violated by
24 judicial bias toward pro se litigants, and that he suffered as a result. *Id.* at 5-6.

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² The court takes judicial notice of the court filings and orders in these four cases. *See Reyn's Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n.6 (9th Cir. 2006).

12(b)(1) Motion to Dismiss Standards

Under Federal Rule of Civil Procedure 12(b)(1), defendants move to dismiss based on this court's lack of subject-matter jurisdiction. Federal courts are courts of limited jurisdiction and can only adjudicate cases authorized by Congress or the Constitution. *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 377 (1994). While federal courts generally have subject-matter jurisdiction when a plaintiff claims that his constitutional rights were violated, they cannot adjudicate constitutional claims that "are inextricably intertwined with the state court's denial in a judicial proceeding of a particular plaintiff's application [for relief]." *D.C. Court of Appeals v. Feldman*, 460 U.S. 462, 483 n.16 (1983). Accordingly, whenever claims would require a federal court to undermine a state court judgment or to interpret the court's application of relevant laws and procedures, those claims must be dismissed. *See Bianchi v. Rylaarsdam*, 334 F.3d 895, 898 (9th Cir. 2003).

Plaintiff must show that jurisdiction exists. *See Sopcak v. Northern Mountain Helicopter Serv.*, 52 F.3d 817, 818 (9th Cir. 1995). When a defendant argues that the lack of subject-matter jurisdiction is apparent from the face of the complaint itself, the court treats the complaint's allegations as true and considers them in the light most favorable to the plaintiff. *See Doe v. Schachter*, 804 F. Supp. 53, 56 (N.D. Cal. 1992).

12(b)(6) Motion to Dismiss Standards

Defendants also move to dismiss under Federal Rule of Civil Procedure 12(b)(6), which challenges the sufficiency of the complaint. *Vega v. JP Morgan Chase Bank, N.A.*, 654 F. Supp. 2d 1104, 1109 (E.D. Cal. 2009). A complaint must provide a "short and plain statement" of a plaintiff's claims. Fed. R. Civ. P. 8(a)(2); *see also Paulsen v. CNF, Inc.*, 559 F.3d 1061, 1071 (9th Cir. 2009). To survive a motion to dismiss, the complaint must allege sufficient facts that, when accepted as true, "state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007); *see Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) ("A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged."). In considering a motion to dismiss for failure to state a claim, the court accepts as true the complaint's factual

1 allegations and construes them in the light most favorable to the plaintiff. *Corrie v. Caterpillar,*
2 *Inc.*, 503 F.3d 974, 977 (9th Cir. 2007). The court construes a pro se pleading liberally and, prior
3 to dismissal, must give the plaintiff an opportunity to cure deficiencies in his complaint—if it
4 appears possible to do so. *See Lopez v. Smith*, 203 F.3d 1122, 1130-31 (9th Cir. 2000) (en banc).

5 Judges enjoy complete immunity for judicial acts within their jurisdiction. *See Forrester*
6 *v. White*, 484 U.S. 219, 227 (1988) (noting that the “class of acts entitled to immunity” can be
7 discerned based on the “intelligible distinction between judicial acts and the administrative,
8 legislative, or executive functions that judges may on occasion be assigned by law to perform”);
9 *Stump v. Sparkman*, 435 U.S. 349, 362 (1978) (“[T]he factors determining whether an act by a
10 judge is a ‘judicial’ one relate to the nature of the act itself, *i.e.*, whether it is a function normally
11 performed by a judge, and to the expectations of the parties, *i.e.*, whether they dealt with the
12 judge in his judicial capacity.”). Such expansive immunity protects the independence of judges,
13 who routinely rule on highly charged disputes. Judicial rulings can lead to disappointment and
14 frustration, and judicial immunity guards against the threat of “vexatious actions prosecuted by
15 disgruntled litigants.” *Forrester*, 484 U.S. at 225.

16 Discussion

17 Two of the bases for defendants’ motion to dismiss—lack of subject-matter jurisdiction
18 and complete judicial immunity—turn on whether defendants are being sued based on their
19 judicial acts. If so, defendants enjoy complete judicial immunity and this court lacks subject-
20 matter jurisdiction.

21 Here, the complaint challenges defendants’ rulings. Plaintiffs claim that defendants
22 ignored pleadings, misconstrued arguments, and committed slander—all in their judicial
23 decisions. ECF No. 1 at 2-7. As in plaintiffs’ previously dismissed cases, plaintiffs’ factual
24 allegations involve “quintessential judicial acts.” *See Sprague*, 2018 WL 1470566, at *3. And
25 plaintiffs’ allegations that defendants lacked jurisdiction when they undertook these judicial acts
26 are “conclusory and without merit[; i]t is certainly within a judge’s jurisdiction to issue orders and
27 judgments.” *See Sprague*, 2018 WL 1470566, at *3. Since plaintiffs have not shown that
28 defendants acted in “the clear absence of jurisdiction,” defendants are shielded from liability by

1 absolute judicial immunity, and the court lacks jurisdiction to review these actions. *See Mireles*
 2 *v. Waco*, 502 U.S. 9, 12-13 (1991); *Bianchi*, 334 F.3d at 898.

3 Because the court lacks subject-matter jurisdiction to review defendants' judicial actions
 4 in state court proceedings, and defendants enjoy complete judicial immunity, dismissal is proper
 5 under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6).³ The court need not reach
 6 defendants' Eleventh Amendment immunity arguments.

7 **Findings and Recommendations**

8 Because defendants are shielded by absolute judicial immunity and the court lacks
 9 subject-matter jurisdiction, leave to amend would be futile. *See Johnson v. Buckley*, 356 F.3d
 10 1067, 1077 (9th Cir. 2004). Therefore, I recommend that

- 11 1. defendants' motion to dismiss, ECF No. 5, be granted;
- 12 2. plaintiffs' complaint, ECF No. 1, be dismissed with prejudice; and
- 13 3. the clerk of the court be directed to close the case.

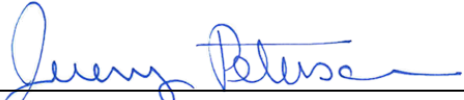
14 I submit these findings and recommendations to the district judge under 28 U.S.C.
 15 § 636(b)(1)(B) and Rule 304 of the Local Rules of Practice for the United States District Court,
 16 Eastern District of California. Within 14 days of the service of the findings and
 17 recommendations, the parties may file written objections to the findings and recommendations
 18 with the court and serve a copy on all parties. That document should be captioned "Objections to
 19 Magistrate Judge's Findings and Recommendations." The district judge will review the findings
 20 and recommendations under 28 U.S.C. § 636(b)(1)(C).

21 ³ Since plaintiffs have already been advised that further frivolous actions could result in
 22 sanctions, plaintiffs should consider the risk of being identified as vexatious litigants should they
 23 continue to pursue frivolous actions against state court judges. Local Rule 151(b) allows the
 24 court to declare litigants vexatious and order them "to give a security, bond, or undertaking in
 25 such amount as the Court may determine to be appropriate" as a requirement to proceed with
 26 litigation. While litigiousness alone is insufficient to support a finding of vexatiousness, *see Moy*
v. United States, 906 F.2d 467, 470 (9th Cir. 1990), repeated litigation "without reasonable or
 27 probable cause" is vexatious, *see Microsoft Corp. v. Motorola, Inc.*, 696 F.3d 872, 886 (9th Cir.
 28 2012).

Prior to being deemed a vexatious litigant, a litigant must receive notice and an
 opportunity to be heard. *See Molski v. Evergreen Dynasty Corp.*, 500 F.3d 1047, 1057 (9th Cir.
 2007). This footnote does not serve as such notice, but advises plaintiffs of a risk in continuing to
 pursue unreasonable and unsupported litigation against state court judges.

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2 IT IS SO ORDERED.

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4 Dated: August 13, 2021


JEREMY D. PETERSON
UNITED STATES MAGISTRATE JUDGE